

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

FREDRICK ALEXANDER MASON

PLAINTIFF

VS.

CIVIL ACTION NO. 3:11-cv-362-WHB-LRA

CHRISTOPHER EPPS;
WEXFORD MEDICAL GROUP, ET AL.

DEFENDANTS

OPINION AND ORDER

This cause is before the Court on the Report and Recommendation ("R and R") of United States Magistrate Judge Linda R. Anderson. After considering the R and R¹ and the Docket in this case, the Court finds it should be adopted in its entirety.

I. Discussion

On June 16, 2011, Fredrick Alexander Mason ("Mason")², filed a lawsuit in this Court against Christopher Epps ("Epps"), in his capacity as Commissioner for the Mississippi Department of Corrections, and Wexford Medical Group, Inc. ("Wexford"), alleging that he had been denied proper medical treatment while he was incarcerated in the Mississippi Department of Corrections. Through his Complaint, Mason sought compensatory and punitive damages on claims brought pursuant to 42 U.S.C. §§ 1983, 1985 and 1988.

¹ The parties were required to file objections to the R and R on or before February 20, 2013. No objections were filed.

² As Mason is proceeding in this case pro se, the allegations in his pleadings have been liberally construed. See e.g. Johnson v. Atkins, 999 F.2d 99, 100 (5th Cir. 1993).

An omnibus hearing on Mason's Complaint was scheduled for November 21, 2011. Mason did not appear for the scheduled hearing. On April 5, 2012, Judge Anderson entered an Order requiring Mason to show cause as to the reason(s) his lawsuit should not be dismissed for lack of prosecution. See Show Cause Order [Docket No. 13]. In response, Mason sent a letter indicating that he was unaware of the previously scheduled omnibus hearing; he had not received notice from the Court regarding the hearing; and that it was possible he had not received notice because his address in the court file was incorrect. See Notice [Docket No. 15]. Based on Mason's response, the undersigned found he had shown cause as to the reason(s) he failed to appear at the previously scheduled omnibus hearing, and that it seemed he desired to prosecute his claims. See Order [Docket No. 17]. The case was thereafter referred back to Judge Anderson who was directed to reschedule the omnibus hearing. Id. Mason was expressly warned "that his failure to appear, without cause, at the omnibus hearing as rescheduled will be considered contumacious conduct that could result in the dismissal of his lawsuit for failure to prosecute." Id.

Judge Anderson rescheduled Mason's omnibus hearing for August 28, 2012. Again, Mason did not appear for the hearing. On February 6, 2013, Judge Anderson entered the subject R and R, which recommends the dismissal of Mason's Complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure based on his failure to prosecute his claims as evidenced by his failure to appear at the rescheduled omnibus hearing. See R & R [Docket No. 22].

After reviewing the R and R, to which no objection has been filed, as well as the Docket in this case that shows that Mason failed to appear at the rescheduled omnibus hearing even though he had been duly warned that such failure to appear could result in the dismissal of his lawsuit, the Court agrees that Mason has failed to prosecute his claims and that his Complaint should be dismissed pursuant to Rule 41(b) for that reason. Accordingly, the Court will adopt Judge Anderson's R and R recommending the dismissal of this case, without prejudice.

For the foregoing reasons:

IT IS THEREFORE ORDERED that the February 6, 2013, Report and Recommendation of United States Magistrate Judge Linda R. Anderson [Docket No. 22], is hereby adopted as the ruling of this Court.

IT IS FURTHER ORDERED that the Motion of Wexford Health Sources, Inc., to Dismiss [Docket No. 20] is hereby granted. A Final Judgment dismissing this case without prejudice shall be entered this day.

SO ORDERED this the 8th day of March, 2013.

s/William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE